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GENEA ENERGY PARTNERS, INC.  
11

12 **IN THE UNITED STATES DISTRICT COURT**  
13 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**  
14

15 JOHN MATTER, dba MATTER SYSTEMS  
16 and MARK FULTON, dba INTEGRITY  
17 AUTO-MATED SOLUTIONS,

18 Plaintiffs,

19 v.

20 KEITH VOYSEY, Chief Technology  
Officer, GENE ENERGY PARTNERS,  
INC., a California Corporation, DAVID  
21 BALKIN, position unknown, CHRIS  
TAYLOR, position unknown, and DOES 1  
22 through 50, inclusive,

23 Defendants.  
24

Case No.: 8:15-cv-00978-CJC-AGR

**CONSOLIDATED REQUEST  
FOR JUDICIAL NOTICE IN  
SUPPORT OF GENE ENERGY  
PARTNERS, INC.'S MOTION TO  
DISMISS AND MOTION FOR  
SANCTIONS PURSUANT TO  
RULE 11**

Date: January 11, 2016  
Time: 1:30 p.m.  
Dept: 9B

Judge: Hon. Cormac J. Carney  
Complaint Filed: June 19, 2015  
FAC Filed: October 5, 2015

25 Defendant, GENE ENERGY PARTNERS, INC. ("Genea"), in support of its  
26 (1) Motion to Dismiss for Lack of Federal Subject Matter Jurisdiction and for Failure  
27 to State Claim Upon Which Relief Can Be Granted ("Motion to Dismiss"), and (2)  
28

1 Motion for Sanctions Pursuant to Rule 11 (“Motion for Sanctions”) respectfully  
 2 request that the Court take judicial notice pursuant to Federal Rule of Evidence 201 of  
 3 the following court documents:

4 1. Complaint for Declaratory Relief (Patent Infringement) against Genea  
 5 (Dkt. 1), filed September 10, 2012 in the Central District of California, Case No. 8-12-  
 6 cv-01506 (“First Federal Action”).<sup>1</sup>

7 2. June 22, 2011 Cease and Desist Letter sent by John Giust to Mark Fulton  
 8 and John Matter. This letter was previously attached as Exhibit B to Complaint for  
 9 Declaratory Relief in the First Federal Action.

10 3. Genea Energy’s Supplemental Statement Re: Discovery Dispute  
 11 Concerning Genea’s Request for Inspection Directed to Plaintiffs (Dkt. 27), filed  
 12 August 26, 2013 in the First Federal Action.

13 4. Declaration of John Giust in Support of Genea’s Supplemental Statement  
 14 re: Discovery Dispute Concerning Genea’s Request for Inspection Directed to  
 15 Plaintiffs (Dkt. 27-2), filed August 26, 2013 in the First Federal Action.

16 5. Civil minutes order issued by Judge David O. Carter’s ordering  
 17 inspection of the WEBSmartAir Product (Dkt. 39), filed October 17, 2013 in the First  
 18 Federal Action.

19 6. Plaintiffs’ Answer with Counterclaims to Genea’ First Amended Answer  
 20 (Dkt. 37), filed October 18, 2013 in the First Federal Action.

21 7. Memorandum of Point and Authorities in Support of Genea’s Motion to  
 22 Dismiss for Lack of Jurisdiction (Dkt. 41-1), filed November 4, 2013 in the First  
 23 Federal Action.

24  
 25 <sup>1</sup> The materials referenced in paragraphs 1 through 12 are court records from Plaintiffs’ first federal  
 26 lawsuit against Genea entitled *Mark Fulton et al v. Genea Energy Partners*, C.A. No. 8-12-cv-01506  
 27 (C.D. Cal.), and are available through the Court’s ECF website. Defendants have not attached  
 28 separate copies of these referenced materials, which together total more than 100 pages, so as to  
 avoid overburdening the Court with a voluminous submission. Nonetheless, should the Court prefer  
 copies of these items, Genea will provide them immediately upon the Court’s request.

1           8.     Plaintiffs' Notice of Motion for Leave to File First Amended Complaint  
2 (Dkt. 56), filed December 1, 2013 in the First Federal Action.

3           9.     Plaintiffs' Withdrawal of Plaintiffs' [PROPOSED] First Amended  
4 Complaint for Damages (Dkt. 58), filed December 10, 2013 in the First Federal  
5 Action.

6           10.    Plaintiffs' Notice of Motion and Renewed Motion for Leave to File First  
7 Amended Complaint (Dkt. 83), filed January 24, 2014 in the First Federal Action.

8           11.    Civil Minutes Order issued by Judge David O. Carter's Order granting  
9 Genea's Motion to Dismiss the First Federal Complaint (Dkt. 93), entered February  
10 25, 2014 in the First Federal Action.

11          12.    Judge David O. Carter's Order Denying Motion for Reconsideration  
12 (Dkt. 103), filed June 10, 2014 in the First Federal Action.

13          13.    Plaintiffs' Complaint for Damages, filed July 23, 2014 in the Superior  
14 Court for the State of California, County of Orange, Case No. 30-2014-00735850  
15 ("State Action"). A true and correct copy of this court record is attached hereto as  
16 Exhibit 1.

17          14.    Genea's Notice and Statement of Demurrer to the State Complaint, filed  
18 October 17, 2014 in the State Action. A true and correct copy of this court record is  
19 attached hereto as Exhibit 2.

20          15.    Genea's Notice of Motion and Motion to Strike portions of the State  
21 Complaint, filed October 17, 2014 in the State Action. A true and correct copy of this  
22 court record is attached hereto as Exhibit 3.

23          16.    Judge Mary Fingal Schulte's Civil Minute Order requiring Plaintiffs to  
24 file their amended complaint by November 19, 2014, entered October 29, 2014 in the  
25 State Action. A true and correct copy of this court record is attached hereto as Exhibit  
26 4.

27          17.    Plaintiffs' First Amended Complaint for Damages, filed December 1,  
28 2014 in the State Action. A true and correct copy of this court record is attached

1 hereto as Exhibit 5.

2 18. Genea's Notice of Demurrer and Statement of Demurrer to the First  
3 Amended Complaint, filed January 20, 2015 in the State Action. A true and correct  
4 copy of this court record is attached hereto as Exhibit 6.

5 19. Genea's Notice of Motion and Motion to Strike the First Amended  
6 Complaint, filed January 20, 2015 in the State Action. A true and correct copy of this  
7 court record is attached hereto as Exhibit 7.

8 20. Plaintiffs' Counter Motion to file (Proposed) Second Amended  
9 Complaint for Damages. A true and correct copy of this court record is attached  
10 hereto as Exhibit 8.

11 21. Judge Mary Fingal Schulte's March 30, 2015 Tentative Ruling, published  
12 April 1, 2015 in the State Action. A true and correct copy of this court record is  
13 attached hereto as Exhibit 9.

14 22. Judge Mary Fingal Schulte's Civil Minute Order granting Defendant's  
15 demurrer, entered April 1, 2015 in the State Action. A true and correct copy of this  
16 court record is attached hereto as Exhibit 10.

17 23. Judge Mary Fingal Schulte's Civil Minute Order dismissing the State  
18 Action without prejudice for failure to amend as required by the Court, entered June 3,  
19 2015 in the State Action. A true and correct copy of this court record is attached  
20 hereto as Exhibit 11.

## 21 **I. ARGUMENT**

### 22 *A. Legal Standard*

23 The standard for judicial notice set forth in Federal Rule of Evidence 201  
24 allows a court to take judicial of an adjudicative fact not subject to "reasonable  
25 dispute," either because it is "generally known within the territorial jurisdiction of the  
26 trial court" or it is "capable of accurate and ready determination by resort to sources  
27 whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). A court  
28 may take judicial notice if requested by a party and "supplied with necessary

information.” Fed. R. Evid. 201(c)(2). Further, a court may take judicial notice of any court records of this state or the United States. *See Fazio v. Reoconstruct Co.*, N.A., No. C13-554-MEJ, 2013 WL 1962336, at \*2 (N.D. Cal. May 10, 2013) (court granting request for judicial notice of court records); *see also Lee v. Bender*, No. C04-2637-SBA, 2005 WL 1388968, at \*8 (N.D. Cal. May 11, 2005) (court granting judicial notice of court records and further stating that “[c]ourt filings and orders are the type of documents that are properly noticed under Federal Rule of Evidence 201”).

*B. Defendant Genea’s Court Records from the Prior Federal Action and Prior State Action*

Genea requests this Court take judicial notice of the items listed in paragraphs 1-23 above. Judicial notice of these documents is appropriate because they are court records and were filed in concurrent litigation, which Courts have found suitable for judicial notice. *See Farahani v. Floria*, No. 12-CV\_04637-LHK, 2013 WL 1703384, at n. 1 (N.D. Cal. Apr. 19, 2013); *Holder v. Holder*, 305 F.3d 854, 866 (9th Cir. 2002) (taking judicial notice of briefs filed in an earlier state court proceeding). Accordingly, this Court may take judicial notice of the court filings and civil minute orders issued in the prior federal court action, Case No. SA CV 12-1406-DOC (MLGx) as well as in the court filings entered in the prior state court action, Case No. 30-2014-00735850.

## II. CONCLUSION

For the foregoing reasons, Genea respectfully requests that the Court grant its request for judicial notice of the above-listed documents.

Dated: December 11, 2015

**DUANE MORRIS LLP**

By: */s/ Ray L. Wong*

Ray L. Wong  
Patrick S. Salceda  
Attorneys for Defendant  
GENEA ENERGY PARTNERS,  
INC.